

**Exhibit B to**  
**Supplementary Amendment**  
**Affidavit of Douglas G. Lowenstein**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/611,548 Confirmation No.: 6763  
Applicant: Douglas G. Lowenstein, et al.  
Title: FINANCING OF TENANT IMPROVEMENTS  
Filed: July 7, 2000  
Art Unit: 3692  
Examiner: S. Chencinski  
  
Atty. Docket: 114595-02  
Customer No. 38492

**AFFIDAVIT OF DOUGLAS G. LOWENSTEIN**

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

I, Douglas G. Lowenstein, declare as follows.

1. I have been involved in the commercial real estate industry since 1987. I have held the following positions:
  - (a) Polestar Capital, LLC, 2004-present – Chairman & CEO. Marketing the structure described in this patent application.
  - (b) Trammell Crow Co., 2002-2003. Trammell Crow Company, founded in 1948, is one of the nation's leading developers and investors in real estate. As of September 30, 2006, Trammell Crow Company had over \$5 billion of development and new investments in process and nearly \$3 billion of additional projects in the pipeline. I was responsible for arranging structured lease financing transactions involving Trammell Crow, Polestar Capital and Trammell Crow's largest clients.
  - (c) Polestar Capital Group, 1996-2001, Founder and Managing Director, former Chairman and & CEO. I worked with the legal community, major accounting firms, rating agencies, and institutional investors to establish the technical viability of the structure described in this patent application.

- (d) Julien J. Studley, 1994-96, Managing Director. Studley is one of the largest brokers of commercial real estate in the U.S. At Studley, I worked on negotiating commercial real estate leases and closing lease transactions.
- (e) Peter R. Friedman, Ltd., 1988-94, Sales person - brokerage. Peter Friedman, Ltd. is a large commercial real estate broker, who assists in arranging commercial real estate leases. I was a salesperson responsible for finding tenants for several large Manhattan office buildings and spaces.
- (f) P.R. Weiss & Co., 1987-88, commercial leasing agent. I represented tenants, and did financial analysis of lease transactions for other brokers.

2. In opining on the definitions of real estate terms of art, I rely on my experience of the ordinary customary meaning that the term would have to person of ordinary skill in the art at the time of the invention. Mr. Boundy explained the concept of "broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art" as required by MPEP § 2111, and my opinions are stated in that light.

3. I understand that Examiner Poinvil expressed the view that the term "lease" as used in the claims of this application means "You can have a lease as just a piece of paper. And if you don't do anything with the lease, if you don't pay any exchange or money, to me nothing has been done in the real world." I understand that Examiner Poinvil expressed the view that the term "lease" means "just giving instructions."

4. All of these statements of Examiner Poinvil are either nonsense, irrelevant to any issue relating to the term "lease," or outright wrong. A mere piece of paper that is not yet a binding agreement is not a "lease." A document that "doesn't do anything" is not a "lease." A "lease" does not merely "give instructions."<sup>1</sup> Until legal obligations relating to possession of property and/or payment of consideration exist, there is no "lease." Examiner Poinvil's hypothetical about "if you don't pay any exchange or money" is gibberish: there may be arrangements that do not involve "exchange" of property or any "payment of money" but such arrangements are not "leases," and his hypothetical speculation is either irrelevant or wrong. A "lease" does not come into existence until a legal arrangement is in force that includes a transfer

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<sup>1</sup> A document may "give instructions," but the instructions would at most be incidental to the contractual rights and obligations regarding property and consideration that define the document as a "lease." Any "instructions" would be essentially irrelevant to the definition of the term "lease."

of possessory rights in property and/or an obligation for payment of money or other consideration. Until there is some present transfer of, or obligation to, "exchange" property and/or "pay ... money," there is no "lease."

5. The definition of the verb "lease" given in Black's Law Dictionary (7th Ed. 1999) is basically correct:

**lease, vb.** 1. To grant the possession and use of (land, buildings, rooms, movable property, etc.) to another in return for rent or other consideration... 2. To take a lease of; to hold by a lease...

A more correct definition would be as follows

**lease, vb.** 1. To grant the possession and use of (land, buildings, rooms, movable property, etc.) to another in return for present payment of or an obligation to pay rent or other consideration... 2. To take a lease of; to hold by a lease...

The verb "leasing" applies to both the lessor's activities and the lessee's activities. The verb "leasing" applies both to the act of entering the lease, and the state of being a party to the grant of possessory rights in property and the obligation to transfer consideration during the term of the lease. The verb "leasing" does not refer to situations of "only giving instructions" or situations where no obligations exist. The verb "leasing" does not mean "just a piece of paper."

6. Leases have monetary value. The monetary values involved in leases are accepted and relied upon by regulatory authorities. For example, sale of a lease may be a taxable realization of income under the Tax Code, and the value of future lease payments due to the lessor may be included in financial reports required by financial regulators. The monetary value of a lease is often realized in subsequent transactions – for example, it is reasonably common to "sell" a lease to a subsequent lessor.

7. Computer processing relating to a lease involves transformation of data that represent discrete dollar amounts, by a machine through a series of mathematical calculations.

8. I understand the term "lease" and the dictionary language set forth above to cover cases and time periods where the lessee has an initial "rent-free" period. The legal obligations and monetary value of a lease come into existence when the lessee enters a pledge to pay rent or other consideration, and is not deferred until the date of the first actual payment of rent.

9. To my knowledge, there is no other term that has exactly the same range of meanings as the verb "lease."

10. I express no opinion on any issue not expressly set forth above.

11. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

Dated: 2/22/07

By: 

Douglas G. Lowenstein